Syed Kechik Holdings Sdn Bhd & Ors v Syed Gamal bin Syed Kechik

HIGH COURT (KUALA LUMPUR) — SUIT NO D24NCC-80 OF 2009
HASNAH HASHIM J
18 SEPTEMBER 2012

Civil Procedure — Contempt of court — Breach of court order — Court order prohibiting defendant from interfering in affairs of company — Defendant commencing action demanding that redemption of company's preference shares be nullified — Whether amounted to breach of the court order — Whether amounted to interference with due administration of justice — Willfully disobeying court order — Whether contempt proven beyond reasonable doubt

The second, third plaintiff and the defendant were the children of late Tan Sri Datuk Syed Kechik ('deceased') and were putative co-administrators of the deceased's estate. They were also beneficiaries of the deceased's estate as well as directors of the first plaintiff company. The plaintiffs had obtained a court order against the defendant to the effect that the defendant was prohibited from interfering in the due discharge and exercise of the duties and powers of the second and third plaintiffs as directors of the first plaintiff ('the order'). The first plaintiff then decided to redeem the preference shares registered under the name of the deceased. The defendant's solicitor issued a letter of demand to the plaintiffs demanding that the redemption of the preference shares be nullified or alternatively that the redemption proceeds be deposited in an investment account and be held on trust for the estate of the deceased pending the distribution thereof. The defendant also filed a writ action to enforce the aforesaid demands. The plaintiffs therefore commenced the present committal proceedings against the defendant and his solicitors on the grounds of having breached the order.

Held, allowing the application with costs:

(1) Contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants, or their witnesses during the litigation. The law of contempt is wide enough to cover not only those who are bound by the court order, but other parties who assist the disobedience to the court order. The existence of an injunction order is not a pre-requisite for a contempt of court. The test is not the breach of the order but interference with the due administration of justice or interference with the course of justice (see paras 12, 16 & 19).

(2) The demand issued by the defendant through his solicitor clearly violated the term of the order restraining the defendant from interfering with the due discharge and exercise of the duties and power of the second and third plaintiff as directors of the first plaintiff. By issuing the letter the solicitor had aided and abetted the defendant to breach the order. The defendant and his solicitor were fully cognisant of the existence of the order and its full means and effect. There was proof beyond reasonable doubt that there had been contempt committed by the alleged contemnors who willfully disobeyed the order (see para 20 & 24).

(3) The contemnors were fined the sum of RM20,000 each to be paid within one (1) week from date of order in default one day imprisonment (see para 25).

[Bahasa Malaysia summary

Plaintif-plaintif kedua, ketiga dan defendan adalah anak-anak allahyarham Tan Sri Datuk Syed Kechik ('si mati') dan adalah dianggap pentadbir-pentadbir bersama estet si mati. Mereka juga adalah benefisiari-benefisiari estet si mati dan juga pengarah-pengarah syarikat plaintif pertama. Plaintif-plaintif telah memperolehi perintah mahkamah terhadap defendan, dan defendan dilarang daripada campur tangan di dalam pengurusan dan pelaksanaan tugas dan kuasa plaintif kedua dan ketiga sebagai pengarah-pengarah plaintif pertama ('perintah'). Plaintif pertama kemudiannya memutuskan untuk menebus saham-saham utama yang didaftarkan di bawah nama si mati. Peguam defendan mengeluarkan surat permintaan kepada plaintif-plaintif meminta bahawa penebusan saham-saham utama dibatalkan atau secara alternatifnya bahawa hasil penebusan didepositkan di dalam akaun pelaburan dan dipegang atas amanah untuk estet si mati sementara menunggu pembahagiannya. Defendan juga memfailkan tindakan writ untuk menguatkuasakan permintaan-permintaan tersebut. Plaintif-plaintif oleh itu memulakan prosiding komital terhadap defendan dan peguam-peguamnya atas alasan memungkiri perintah tersebut.

Diputuskan, membenarkan permohonan dengan kos:

(1) Penghinaan mahkamah boleh dikatakan dibentuk oleh apa-apa tingkah laku yang akan membawa kepada kuasa dan pentadbiran undang-undang tidak dihormati atau tidak dipedulikan, atau untuk campur tangan dengan pihak-pihak yang diprejudis, litigan-litigan, atau saksi-saksi mereka semasa litigasi. Undang-undang penghinaan adalah sangat luas untuk merangkumi bukan sahaja sesiapa yang terikat dengan perintah mahkamah, tetapi pihak-pihak lain yang membantu dengan pengingkaran kepada perintah mahkamah. Kewujudan perintah injunksi adalah bukan satu pra-syarat untuk penghinaan mahkamah. Ujian bukan kemungkiran perintah tetapi campur tangan dengan pentadbiran keadilan atau campur tangan dengan pelaksanaan keadilan (lihat perenggan 12, 16 & 19).

(2) Permintaan yang dikeluarkan oleh defendan melalui peguamnya jelas melanggar terma perintah yang menghalang defendan daripada campur tangan dengan pengurusan dan pelaksanaan tugas dan kuasa plaintif-plaintif kedua dan ketiga sebagai pengarah-pengarah plaintif pertama. Dengan menggeluarkan surat peguam telah membantu dan bersubahat dengan defendan untuk memungkiri perintah tersebut. Defendan dan peguamnya sedar akan kewujudan perintah dan maksud dan kesan sepenuhnya. Terdapat bukti melampaui keraguan munasabah bahawa terdapat penghinaan oleh penghina-penghina mahkamah yang didakwa yang sengaja mengingkari perintah (lihat perenggan 20 & 24).

(3) Penghina-penghina mahkamah didenda sejumlah RM20,000 setiap seorang dibayar dalam masa satu minggu dari tarikh perintah jika ingkar penjara satu hari (lihat perenggan 25).]

Notes

For cases on breach of court order, see 2(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 1994–2017.

Cases referred to

Attorney-General v Times Newspapers Ltd [1991] 2 All ER 398, HL (folld)
B (JA) (An Infant), Re [1965] Ch 1112, Ch D (folld)
Bramblevale Ltd, Re [1970] Ch 128, CA (folld)
He Kingdon, In Re v SC Goho [1948] 1 MLJ 17; [1947] 1 LNS 87 (folld)
Jasa Keramat Sdn Bhd v Monatech (M) Sdn Bhd [2001] 4 MLJ 577; [2001] 4 CLJ 549, CA (folld)
Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors [2012] 3 MLJ 458; [2012] 2 CLJ 849, FC (folld)

Legislation referred to

Probate and Administration Act 1959 s 2(1)

Vijay Kumar (David Matthews with him) (Kumar Jaspal Quah & Aishah) for the plaintiff/respondent.
Pawancheek Marican (Suzilawati Ismail with him) (Wan Marican, Hamzah & Shaik) for the defendant/appellant.

Hasnah Hashim J:

[1] Enclosure 56 is the committal proceedings against the defendant and his solicitor for breach of the order issued by the court dated 24 August 2010. Leave to commence the committal was granted on 2 May 2012.

BACKGROUND

[2] The second, third plaintiff and the defendant are the children of late Tan

Sri Datuk Syed Kechik ('the deceased'). They are beneficiaries of the deceased's estate as well as directors of the first plaintiff. The second and third plaintiffs together with the defendant are also the putative co-administrators of the deceased's estate. The letters of administration however have yet to be extracted.

[3] The plaintiffs had commenced an action against the defendant vide originating summons dated 6 November 2009 (encl 1) seeking declaratory and injunctive reliefs. By an order dated 24 August 2010 the court ordered as follows:

(i) It is declared that the Defendant herein has no right and/or interest in the 1st plaintiff and/or is assets until he is registered as a member of the 1st plaintiff company upon the completion of the administration and distribution of the Deceased's estate;

(ii) ordered that the Defendant herein, his agents, servants, representatives and/or whosoever acting for him are restrained from accessing and interfering in the assets, record, accounts, and the affairs of the first Plaintiff;

(iii) further ordered that the defendant herein, agents, servants, representatives and/or whosoever acting for him be further restrained from interfering in the due discharge and exercise of the duties and powers of the 2nd and 3rd plaintiffs as Directors of the 1st plaintiff.

('The order').

[4] The first plaintiff then decided to redeem the preference shares registered under the name of the deceased at par value of RM1 per share. On 27 February 2012 the solicitor for the defendant issued a letter of demand to the plaintiffs and demanded the following:

(i) nullify the redemption of 100,002 preference shares registered under the name of the deceased and to reinstate the same; or alternatively

(ii) to place the sum of RM29,000,002.00 in an investment account with Bank Islam Malaysia Berhad within ten (10) days which sum together with any income thereon is to be held on trust for the estate of the deceased pending the distribution thereof to all the beneficiaries of the estate under the Islamic Law of inheritance.

THE PLAINTIFFS

[5] It is the submission of learned counsel for the plaintiff that the defendant had willfully and deliberately disobeyed the order when he did the following acts prior to becoming a shareholder/member of the first plaintiff and before

the completion of the administration of estate as well as the distribution of the assets:

(a) the defendant had instructed his solicitor to issue a letter of demand to challenge the first plaintiff's decision to redeem the deceased preference shares at par value;

(b) the defendant had demanded through the letter of demand that the plaintiffs to reverse the effect of the redemption exercise; and

(c) filed a writ action to enforce the aforesaid demands.

[6] As beneficiary the defendant has no rights within the first plaintiff until he is a member. The acts as mentioned above are clear breaches of the order dated 24 August 2010.

[7] It is also submitted that the solicitor for the defendant by issuing the letters of demand and subsequently filing the writ he had knowingly and deliberately aided and abetted the commission of the breaches of the said order and is therefore is equally guilty of contempt. Learned counsel further submitted that the order was not interlocutory but was final in nature. The defendant and his solicitor were both fully aware of this fact. Therefore the respondents' action are clearly in direct contravention of the order.

[8] The interim injunction does not decide the rights of the parties. The purpose was to preserve the prevailing status quo prior to final decision. When the final order was made the interim order lapses and is superseded by the terms of the final order. The final order was never appealed and its terms are therefore conclusive and binding.

[9] It is the submission of the plaintiffs that the effect of the demands made and the filing of the writ clearly violated the injunction as it is a direct challenge to the terms of the order.

THE DEFENDANT'S CASE

[10] It is the contention of the defendant that he has not breached the terms of the order as the letter of demand was sent out by him not as a member/shareholder or director of the first plaintiff but as a beneficiary of the estate under *faraid*. Learned counsel for the defendant further submits that a preference shares falls within the definition of property under s 2(1) of the Probate and Administration Act 1959. The final order clearly provides that it prevents claims by the defendant against any interest in or assets of the first plaintiff whereas the letter of demand touched on the defendant having a right or interest in the estate of the deceased. The preference shares are the property

of the deceased at the time of death and not the asset of the first plaintiff. Therefore the letter of demand issued and the writ are not in violation of the order made by the High Court.

[11] It is further submitted that the contempt proceedings is an abuse of the process of court and is mala fide.

THE LAW

[12] Contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants, or their witnesses during the litigation.

[13] Brown J in *In Re He Kingdon v SC Goho* [1948] 1 MLJ 17; [1947] 1 LNS 87 said:

> … the root principle on which this inherent power to punish for contempt is founded, and the purpose for which it must be exercised, is not to vindicate the dignity of the individual judge or other judicial officer of a court or even of the court itself, but to prevent an undue interference with the administration of justice in the public interest.

[14] Arifin Zakaria CJ in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458; [2012] 2 CLJ 849 observed:

> … the power to punish a contempt is not derived merely from statute nor truly from common law but instead flows from the very concept of a court of law. (See *Borrie & Lowe's The Law of Contempt*, (3rd Ed), at p 465; and *Master Jacob* [1970] 23 Current Legal Problems 23). Contempt has been reclassified either as (1) a specific conduct of contempt for breach of a particular court order; or (2) a more general conduct for interfering with the due administration or the course of justice. This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v Newspaper Publishing Plc*, at p 362:
>
> > Of greater assistance is the reclassification as (a) conduct which involves a breach, or assisting in the breach, of a court order; and (b) any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process, the first category being a special form of the latter, such inference being a characteristic common to all contempts per Lord Diplock in *Attorney-General v Leveller Magazine Ltd* [1979] AC 440 at p 449.

[15] Cross J in *Re B (JA) (An Infant)* [1965] Ch 1112 had this to say:

> Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations. For example, it is provided that there must be personal service of the motion on him even though he appears by solicitors, and that the notice of motion must set out the grounds on which he is said to be in contempt; further, he must be served as well as with the motion, with the affidavits which constitute the evidence in support of it.

[16] The law of contempt is wide enough to cover not only those who are bound by the court order, but other parties who assist the disobedience to the court order. It was reported in *Attorney-General v Times Newspapers Ltd* [1991] 2 All ER 398 that a person, who knowingly impeded or interfered with the administration of justice in an action between two other parties, was guilty of contempt of court notwithstanding that he was neither named in any order of the court nor had assisted a person against whom an order was made (*Jasa Keramat Sdn Bhd v Monatech (M) Sdn Bhd* [2001] 4 MLJ 577; [2001] 4 CLJ 549).

[17] In *Re Bramblevale Ltd* [1970] Ch 125, Lord Denning MR said:

> A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt.

[18] The Federal Court in the *Jasa Keramat* also states that:

> It is true that courts should be slow to punish a person for contempt. But that does not mean that the courts should sit with folded arms, engrossed with legal theories whilst parties in the proceedings are removing the subject matter of the claim to defeat the making of the order that the court would and might make and to reduce the order, if and when made, to no more than a paper judgment, as had happened in this case. Interest of individuals is to be respected, yes, but not that of dishonest individuals. And, when the interest of justice and of the public come face to face with the interest of individuals, the former must prevail. Otherwise, the public will lose confidence in the courts. If the courts and the administration of justice are to be respected, the courts must ensure that their judgments are effective. Judgments are not mere literary works. No matter how learned they are and how well they are written, if they cannot deliver the goods, they are of no use.

[19] The existence of an injunction order is not a pre-requisite for a contempt of court. The test is not the breach of the order but interference with the due administration of justice or interference with the course of justice.

[20] In the instant case the demand issued by the defendant through his

solicitor clearly violated the term of the injunction order restraining the defendant from interfering with the due discharge and exercise of the duties and power of the second and third plaintiff as directors of the first plaintiff. By issuing the letter the solicitor had aided and abetted the defendant to breach the order. As an officer of the court the solicitor's paramount duty is to uphold the dignity of court and to respect its orders.

[21] The plaintiff's solicitor had responded to the letter referring to the demands and gave notice that the demands made is a direct contravention of the order. The defendant, however through his solicitor issued another letter dated 8 March 2012 to justify the basis of the demand and gave notice of the defendant's intended suit against the plaintiff. A writ of summons are state of claim was subsequently filed and registered as 22NCC-469–03 of 2012 against the plaintiff and Sofiah Moo @ Moo Nyit Yin, the widow of the deceased and mother of the second and third plaintiffs. The defendant is seeking to declare the redemption of 100,000 preference share at par value of RM1 as being in breach of law and therefore null and void.

[22] An order of the court must be diligently and strictly observed as well as obeyed.

[23] The defendant and his solicitor were fully cognisant of the existence of the order and its full means and effect. The letters of demand tantamount to an interference in the affairs of the company which the defendant is expressly prohibited to do so by the injunction order dated 24 August 2010.

[24] The demands made vide the aforesaid letter amount to a breach of the order by the defendant and his solicitor. The defendant has yet to be registered as a member of the first plaintiff and neither has the administration of the estate completed and its assets duly distributed. Guided by the principles mentioned above I find there is proof beyond reasonable doubt that there has been contempt committed by the alleged contemnors who willfully disobeyed the order dated 24 August 2010, and find them guilty of contempt of court. I hereby allow the application for an order of committal against the defendant and his solicitor, Encik Pawancheek Marican.

SENTENCE

[25] After hearing the plea in mitigation and learned counsel for the plaintiff

not pressing for a custodial sentence, I fine the contemnors the sum of RM20,000 each to be paid within one week from date of order (14 June 2002) in default one day imprisonment. Cost of RM15,000.

Application allowed with costs.

Reported by Kanesh Sundrum